

1 are you generally told by the advertising agencies?

2 A That they are choosing one station group, per se,
3 to purchase their ads on, because they can one-stop shop
4 type thing, you know.

5 Q Okay. Let's take a specific example. Can you
6 think of a particular product or a particular -- I don't
7 know what the word would be, like McDonald's or whatever
8 entity. Have you ever tried to get a McDonald's ad or an
9 entity ad like that from an advertising agency?

10 A Safeway would probably be a good example.

11 Q Okay. You tried to get a Safeway ad from an
12 advertising agency?

13 A Right.

14 Q And they did not advertise with you. Is that
15 correct?

16 A It took several years.

17 Q During the years that they didn't, they turned you
18 down, did they give you a reason why they didn't advertise
19 with you?

20 A Because their stations were able to be heard,
21 Peninsula stations were able to be heard in all areas of the
22 peninsula, and so they were able to reach all listeners.

23 Q That is because they went with Peninsula. **Is** that
24 what you're saying?

25 A Right.

1 Q Now as a result of them telling you that they went
2 to Peninsula, did you do anything to confirm that?

3 A I can turn on the stations and listen to Peninsula
4 and hear that they're on there.

5 Q So the ads that you were trying to get, you
6 actually heard on the Peninsula stations?

7 A Correct.

8 Q Did you ever have any conversations with Mr. Coval
9 regarding specific advertisers that he had gotten?

10 A We had discussed Dodge in the past, BVDO.

11 Q Do you have any other kind of communications
12 regarding ads, national ads, or ads that you've tried to get
13 that perhaps Peninsula has also tried to get?

14 A There has been times where maybe we had a Safeway
15 ad and they didn't get it on their MP3 **or** something, and we
16 have to e-mail it to them and vice versa.

17 Q What's an MP3?

18 A **An** electronic file of the commercial that's e-
19 mailed.

20 Q So you've had agencies ask you to send the ad to
21 Peninsula?

22 A Or peninsula call us, or us call Peninsula, to
23 send messages back and forth, **yes**.

24 Q So you've gotten this information not only from
25 the ad agencies, but you've followed up on the ad agencies

1 and you've heard the ad yourself and you've confirmed it in
2 some cases with Mr. Coval?

3 A Correct.

4 MR. SOUTHMAYD: *So*, Your Honor, the basis for this
5 is hearsay.

6 JUDGE SIPPEL: No, no. I have heard enough. It
7 sounds like what we are involved here with is, to use a
8 common parlance. There is nothing negative meant by this,
9 but it is really hustling for business. And whether **or**
10 not -- I do not want this case to have to get into that kind
11 of issue. I do not think we need it, for one thing.

12 She certainly has expressed herself in terms of
13 how she views the market and how Mr. Becker views the market
14 and she does not agree with the way he measures it. The
15 rest of it is all, to me, it just becomes very speculative
16 in terms **of** using terms like misconstruing and making it
17 sound like there is something -- the other thing that
18 strikes me is that it is hard for me to believe that Safeway
19 cannot figure something out. That does not strike me as
20 being credible.

21 MS. JANCMASTER: Your Honor, if I may respond to
22 that?

23 JUDGE **SIPPEL**: *Yes*, ma'am.

24 MS. LANCASTER: I think the point here is **how**
25 Peninsula's translators have hurt the business *of* the full-

1 service stations in that particular local area. One of the
2 ways it has hurt those businesses is by taking away
3 advertising that would otherwise go to the station that she
4 works at.

5 And one of the ways that they take away that
6 advertising business is that they use a survey that is not
7 specific to that particular area and they represent to the
8 advertisers that it is specific to that particular area.
9 And that is what she means by misrepresent.

10 You've got, in this particular case, even though
11 her original basis for knowing that they had taken these ads
12 away from KSRM was hearsay, she followed up and she heard
13 the ads herself. So she knows that those ads went to them.
14 And she also got basically an admission against interest
15 from PCI'S, from Peninsula's advertising manager that they
16 had taken the ads away.

17 JUDGE SIPPEL: Now, aside from it being hearsay,
18 as I say, it sounds like, to me what it is sounding like is
19 that she lost business to Peninsula. Right?

20 MS. LANCASTER: Yes, sir.

21 JUDGE SIPPEL: That is about all I can construe
22 from it, that is about all I really can construe from it.
23 And she had particular **situations in** which she lost the
24 business. But I cannot allow that to be the basis for this
25 kind of a broad statement upon which to make any findings on

1 it. As I say, I do not want to go down that road any
2 further, because it is a side issue that is complicating the
3 record and we do not need it. Se really do not need it. We
4 have got to go back and look at the May, 2001 order.

5 So what I am going to do is, I am going to sustain
6 the objection. I am going to strike that sentence as being
7 speculative and, at best, being speculative and being too
8 tangential to the issue at hand.

9 MR. SOUTHMAYD: Are we able to do the same thing
10 with the other sentence, Your Honor? At the end of
11 Paragraph 5: Peninsula was able to misconstrue the ratings
12 information and undercut our advertising rate.

13 JUDGE SIPPPEL: Well, I will let is stay in to say
14 that Peninsula was able to undercut our advertising rates,
15 because the translators allow Peninsula to be heard in other
16 areas. But the misconstruing stuff, yes, I am going to take
17 that out. Same basis. So I take out the language there. I
18 am taking these words out: misconstrue the ratings
19 information and...

20 So the sentence would then read: Peninsula was
21 thus able to undercut our advertising rates because the
22 translators allowed Peninsula to be heard in areas where we
23 cannot broadcast.

24 MR. SOUTHMAYD: Thank *you*, Your Honor. The first
25 paragraph, first sentence in Paragraph 6. What we object to

1 is, as we did in previous testimony, the characterization of
2 Peninsula's "illegal operation of its translators."

3 MS. LANCASTER: Your Honor, before we move onto
4 Paragraph 6, can you also give the language, did you change
5 the language that due to the large geographical area that
6 was at the end of page two?

7 JUDGE SIPPEL: Yes.

8 MS. LANCASTER: And what was the exact language
9 that you left in?

10 JUDGE SIPPEL: Where do you have me now?

11 MS. LANCASTER: The next to the last line on Page
12 2, there's a sentence that starts: Due ~~to~~ the large
13 geographical area.

14 Do you see that?

15 JUDGE SIPPEL: Yes. That is a different sentence.
16 I am taking that whole sentence out because I do not see a
17 way in which I can reconstruct it, because of the conclusion
18 there about Safeway not being able to understand something.
19 I just cannot buy into that. And I am certainly not going
20 to create a record to show one way or the other whether they
21 can or not.

22 So I have ruled on that and I am satisfied with
23 that one. But the second one, I am leaving in as much as I
24 can.

25 MS. LANCASTER: Thank you.

1 MR. SOUTHMAYD: All right. The first line in
2 Paragraph 6, referring to Peninsula's illegal operation of
3 its translators, which we objected to before.

4 JUDGE SIPPEL: How did we phrase it?

5 MR. SOUTHMAYD: Allegedly?

6 MS. LANCASTER: No, Your Honor. I think you said:
7 allegedly unauthorized, or something to that effect.

8 MR. SOUTHMAYD: That's correct.

9 JUDGE SIPPEL: Allegedly unauthorized, okay. Can
10 we do the same thing here, then. Allegedly unauthorized.
11 So I am striking the word illegal and substituting two
12 words: allegedly unauthorized. That is at the end of the
13 first line of Paragraph 6 on Page 3. Can you hear me all
14 right?

15 THE REPORTER: Yes.

16 MR. SOUTHMAYD: Going down: "When you call
17 Peninsula in Kenai, you get an answering machine."

18 VOIR DIRE EXAMINATION (RESUMED)

19 BY MR. SOUTHMAYD:

20 Q Can I ask the witness: Have you called the
21 Peninsula studios in Kenai?

22 A Yes, I have.

23 Q On more than one occasion?

24 A Yes, I have.

25 Q And your experience has only been you get an

1 answering machine?

2 A Yes, it is.

3 Q But you don't know for a fact that when everyone
4 calls in, they get an answering machine?

5 A No, when I've called there, I got an answering
6 machine.

7 MR. SOUTHMAYD: Perhaps that could be modified to
8 say: When I called Peninsula, I get an answering machine.

9 JUDGE SIPPEL: That is A. You do not have any
10 objection to that, do you?

11 MS. LANCASTER: No, sir.

12 JUDGE SIPPEL: When I called and that would be in
13 the past tense, called. When I called Peninsula in Kenai,
14 can you say I got? Okay. So that sentence in the middle of
15 Paragraph 6 is reconstructed to read as follows: When I
16 called Peninsula in Kenai, I got an answering machine.

17 MR. SOUTHMAYD: Okay. Paragraph 9, Page 5. First
18 sentence, I mean, first and second sentences: KSRM, Inc.
19 willingly complies with all FCC requests. Peninsula does
20 not

21 The conclusion is unsupported. I purport to
22 strike that: Peninsula does not.

23 MS. LANCASTER: I object, Your Honor. I think the
24 record has plenty of evidence in it that Peninsula **does** not
25 comply with FCC requests.

1 MR. SOUTHMAYD: I disagree, Your Honor. I think
2 there may be an issue here that we did not comply with an
3 FCC order, but there's no question about Peninsula not
4 complying with all FCC requests. And this says all FCC
5 requests. We do have a record that Peninsula has operated
6 for over 25 years and never had a forfeiture.

7 MS. LANCASTER: Your Honor, I would object to him
8 testifying.

9 JUDGE SIPPEL: Well, wait a minute, wait a minute.

10 MR. SOUTHMAYD: Those are on the record in the
11 direct quotes.

12 JUDGE SIPPEL: Well, wait, Mr. Southmayd. I would
13 not push this one. I really would not. Let's just drop
14 that and move onto something else.

15 MR. SOUTHMAYD: Those are the objections that I
16 had, Your Honor.

17 JUDGE SIPPEL: Okay.

18 MR. SOUTHMAYD: Especially to -- only the note
19 that this is a different direct case than the one that was
20 originally exchanged.

21 JUDGE SIPPEL: Are you objecting on authenticity
22 now?

23 MR. SOUTHMAYD: Well, yes, Your Honor. The one
24 that was originally exchanged is dated the 10th day of
25 September, 2002.

1 JUDGE SIPPEL: Yes.

2 MR. SOUTHMAYD: The fax legend at the top of it is
3 dated September 11, 2002, which raises a very real question:
4 How could it be signed on September 10 when it was
5 transmitted by fax on September 11? And now the new
6 testimony we have is dated September 9, which was two days
7 before September 11.

8 JUDGE SIPPEL: Well, couldn't you sign it on the
9 9th and fax it on the 11th?

10 MR. SOUTHMAYD: Well, this fax number, this 806
11 fax number, I'm not sure what it is. That's why I asked the
12 witness who Richard Codia is and she claimed she didn't know
13 who he was.

14 BY MR. SOUTHMAYD:

15 Q Do you know, Ms. Brewer, what this (806) 794-9874
16 number is?

17 A I do not, but that was faxed from the Seatack
18 Marriott in Seattle last week or when I was there. That is
19 where I faxed it from. Maybe that's stamped on there at the
20 hotel.

21 Q Do you know is that the number of the hotel there?

22 A I don't know. No. I was on business travelling.

23 MR. SOUTHMAYD: Anyway, Your Honor, I'll just move
24 on.

25 MS. LANCASTER: Your Honor, I have **no** objections

1 to putting in the record the faxed copies if you would
2 prefer. I printed out a fresh copy and let her sign it
3 because I did not have an original signature because she
4 forgot to bring her signature page. But, if you would
5 prefer for me to substitute the other, I'll be happy to do
6 that.

7 JUDGE SIPPEL: No. What I want you to do is put
8 it in as EB Number 32A, so that anybody looking at this
9 record can **look** at the both of them, if they're interested
10 in doing that.

11 (The document referred to was
12 marked for identification as
13 Enforcement Bureau's Exhibit
14 32A.)

15 MS. LANCASTER: Okay. I'll be happy to.

16 MR. SOUTHMAYD: That's all I have, Your Honor,
17 except for my cross.

18 JUDGE SIPPEL: Okay. Then, subject to the
19 rulings, EB 32 and EB 32A are hereby received *in* evidence.

20 (The documents referred to,
21 previously marked for
22 identification as Enforcement
23 **Bureau's** Exhibits 32 and 32A,
24 were received in evidence.)

25 MS. LANCASTER: I apologize, Your Honor, I don't

1 have enough copies for everybody of 32A, because it is the
2 same one that was in the directory. It was what was
3 exchanged.

4 JUDGE SIPPEL: Well, all right. When you say you
5 do not have enough for everybody, what do you mean, you do
6 not have enough for everybody?

7 MS. LANCASTER: I don't have enough extra copies
8 of that particular --

9 JUDGE SIPPEL: Of the faxed copies?

10 MS. LANCASTER: Yes, sir, but it's in the direct
11 case, so everyone has gotten a copy of it.

12 JUDGE SIPPEL: Well, who doesn't have a copy that
13 wants a copy?

14 MR. SOUTHMAYD: We already have one.

15 JUDGE SIPPEL: And I have one and you all have
16 one.

17 MS. LANCASTER: Okay, okay.

18 JUDGE SIPPEL: So everybody has one and the
19 witness has explained it to the best of her knowledge

20 Are you tendering then for cross-examination?

21 MS. LANCASTER: I'm tendering the witness, Your
22 Honor.

23 JUDGE SIPPEL: For cross-examination? All right
24 Mr. Southrnayd, you may proceed, sir.

25 **CROSS-EXAMINATION**

1 BY MR. SOUTHMAYD:

2 Q Ms. Brewer, if you could turn to Page 4 of your
3 testimony, Paragraph 7? Six lines down, it reads: Peninsula
4 Communications covers only one high school locally.

5 What do you mean by that, covers what? First of
6 all, what high school is that?

7 A That would be Kenai Central High School

8 Q Kenai Central. And what do they cover?

9 A Basketball.

10 Q Do they broadcast it live?

11 A They do.

12 Q So Peninsula, and do you know which station or
13 stations they broadcast it on?

14 A I think that's KXBA.

15 Q Okay, KXBA. And Kenai Central is a local high
16 school?

17 A One of the four.

18 Q So would it be fair to say that Peninsula
19 broadcasts live local programming consisting of a high
20 school basketball game?

21 A The Kenai Central High School basketball game.

22 Q Right?

23 A Right.

24 Q That would be live local programming?

25 A For that one high school, yes.

1 Q Okay. Thank you. If you could turn to Page 5,
2 Paragraph 9? You note that Peninsula has a contract to
3 broadcast borough assembly meetings. Is that correct?

4 A Correct.

5 Q Can you explain what the borough assembly meetings
6 are?

7 A It would be like a city council or a county
8 meeting, borough government.

9 Q And that would be the borough government for who?

10 A Kenai Peninsula Borough.

11 Q So is that the local borough government?

12 A For the Kenai Peninsula, yes.

13 Q For your market?

14 A No. That would be the entire market. Not for the
15 Kenai, Soldotna market, not just the Kenai, Soldotna market.

16 Q The entire area that the Arbitron survey covers?

17 A Yes.

18 Q Okay. Do you know which station that programming
19 is broadcast on?

20 A I don't. I know the signal is in Seward and
21 Homer, as well as the local area.

22 Q But it's broadcast locally in Kenai, Soldotna on
23 one of the Peninsula stations?

24 A Right.

25 Q Is it broadcast live?

1 A It is.

2 Q Would you consider that local public affairs
3 programming?

4 A I would.

5 Q That is broadcast live by Peninsula on its local
6 station?

7 A Yes.

8 Q Ms. Brewer, just for background, quickly, prior to
9 your employment, you began working for KSRM in 1999. Is
10 that correct?

11 A That's correct.

12 Q What did you do prior to that?

13 A I owned my own business.

14 Q What was that?

15 A Well, actually, I worked for Abyss Answering
16 Service in Anchorage.

17 Q Abyss?

18 A Mm-hmm.

19 Q That was during what period?

20 A That was from '98 to '99.

21 Q What did you do before that?

22 A I was a consultant for Abyss and before that I
23 owned my own answering, secretarial service.

24 Q So, prior to going to work for KSRM, was your
25 occupation essentially involved in the answering service

1 industry?

2 A For a short time.

3 Q I see. Could you give me some indication, just
4 briefly, of your educational background, ma'am?

5 A Kenai Central High School.

6 Q **Is** that the same one the basketball games are
7 broadcast from?

8 A It is.

9 Q I see. And you graduated from there in?

10 A 1980.

11 Q Okay. I could ask you, but I'm going to give you
12 this and ask you if this is accurate. Does KSRM own and
13 operate KKIS-FM, KSRM-AM, KWHQ-FM and KSLD-AM?

14 A Yes.

15 Q Do they own and operate any other stations in the
16 Kenai, Soldotna market?

17 A No.

18 Q Does Peninsula operate KGTL-FM, KXBA-FM in the
19 Kenai, Soldotna market?

20 A KXBA.

21 Q KXBA?

22 A Right.

23 Q And KPEN-FM?

24 A KPEN, yes.

25 Q Those are both full-power **FM** stations?

1 A Correct.

2 Q Then is it correct that Peninsula has two
3 translators that, up until May, were operating in the
4 market?

5 A Correct.

6 Q Ms. Brewer, are there any other local commercial
7 stations that vie for local commercial revenue in the
8 market, other than the Peninsula stations and the KSRM
9 stations?

10 JUDGE SIPPEL: Which market? Do you want to
11 identify --

12 BY MR. SOUTHMAYD:

13 Q The Kenai Peninsula, I mean, the Kenai, Soldotna
14 market?

, 15 A That are commercial stations?

16 Q Yes. That vie for commercial advertising?

17 A **No.**

18 Q so would it be true that if Peninsula's licenses
19 were revoked and these Peninsula stations went off the air,
20 KSRM would have a monopoly on commercial radio in the Kenai,
21 Soldotna market, as you define it?

22 MS. LANCASTER: Objection, Your Honor. The reason
23 I object is because that's **speculation**. There could be
24 other entities licensed in that area. Their licenses --

25 MR. SOUTHMAYD: **Yes.**

1 JUDGE SIPPEL: But I have not heard the answer yet
2 -- on what basis?

3 MS. LANCASTER: Yes, sir, but I object --

4 JUDGE SIPPEL: That is it. No. I know you
5 objected on the basis that it is speculative. I am
6 overruling the objection. I am going to let him ask. I
7 want the question asked and answered.

8 THE WITNESS: There is a public radio station that
9 does take dollars from the market.

10 BY MR. SOUTHMAYD:

11 Q But they don't run commercial advertising, do
12 they, or do they?

13 A They take grant dollars from the market.

14 Q But do they run commercial advertising, as you
15 understand commercial advertising being in the radio
16 business?

17 A I guess not selling messages.

18 Q So is the answer no?

19 A No.

20 Q So then is my original premise that the only
21 stations in the market that would be selling commercial
22 advertising would be KSRM, Inc.?

23 A If Mr. Becker's stations were not in the market at
24 this point, yes.

25 MR. SOUTHMAYD: Thank you.

1 JUDGE SIPPEL: All right. You can redirect in
2 this area, Ms. Lancaster, if you care to. But that is when
3 he is finished.

4 BY MR. SOUTHMAYD:

5 Q Ms. Brewer, did you write this testimony yourself?

6 A I spoke this testimony. I did not write it.

7 Q Are you saying you dictated this testimony?

8 A These are my words, yes.

9 Q But you personally created them and dictated them
10 to someone?

11 A No. Ms. Lancaster wrote this after I gave her my
12 testimony.

13 Q Excuse me, I guess I'm not getting my point
14 across. Are these the words you dictated to Ms. Lancaster
15 or did you dictate -- well, explain it to me, if you would,
16 please? I don't understand. Did you dictate to her, my
17 name is Sheree Brewer and so forth, all this testimony?

18 A Not word for word, but this **is** my testimony, yes.

19 Q No. I understand. But was it originally written
20 by you, or did someone else originally write it and give it
21 to you?

22 A I spoke these words before I ever saw it in
23 writing.

24 Q Who did the writing, as far as you know, the first
25 time?

1 A Ms. Lancaster.

2 Q Thank you. Ms. Brewer, do you know whether KSRM,
3 Inc. has caused ads to be put in the local newspapers,
4 indicating that Mr. Becker is illegally operating, or has
5 illegally operated translators in your market?

6 A I know of one ad.

7 Q Was that a full-page ad?

8 A No. I think it was a quarter-page ad.

9 Q But you only know of one ad?

10 A Mm-hmm.

11 MR. SOUTHMAYD: Thank you. I have nothing
12 further, Your Honor.

13 JUDGE SIPPEL: Any redirect?

14 MS. LANCASTER: One moment.

15 REDIRECT EXAMINATION

16 BY MS. LANCASTER:

17 Q Ms. Brewer, I believe Mr. Southmayd asked you when
18 he was asking you about the various stations that are in the
19 Kenai, Soldotna market, he may have inadvertently, or maybe
20 testing your memory, asked you about the date that the
21 translators, Mr. Becker's Peninsula translators, were turned
22 off. Do you recall when the translators were turned off?

23 A Approximately three weeks ago.

24 Q What month would that have been?

25 A That would have been September

1 Q So, if Mr. Southmayd's question indicated that
2 they were turned off in May --

3 A May, yes.

4 Q -- would that **be** correct or incorrect?

5 A Incorrect.

6 MS. LANCASTER: Thank you. I have no further
7 questions, Your Honor.

8 JUDGE SIPPEL: You are excused as a witness.
9 Thank you very much, Ms. Brewer

10 I am going to take a five minute break for you to
11 bring your next witness in.

12 MS. LANCASTER: Thank you, Your Honor.

13 JUDGE SIPPEL: Let us go off the record.

14 (Whereupon, a short recess was taken.)

15 JUDGE SIPPEL: Ms. Lancaster, you have another
16 witness?

17 MR. SHOOK: We do, Your Honor. This is Dennis
18 Bookey.

19 JUDGE SIPPEL: Dennis Bookey is on the stand now?

20 MR. SHOOK: Yes, sir.

21 JUDGE SIPPEL: Mr. Bookey, would you stand and
22 raise your right hand please, sir?

23 Whereupon,

24 DENNIS BOOKEY

25 having been duly sworn, was called as a witness

1 and was examined and testified as follows:

2 JUDGE SIPPEL: Please be seated.

3 MR. SHOOK: Your Honor, I'm going to give to the
4 Court Reporter and to yourself and Mr. Bookey and Mr.
5 Southmayd what will be marked for identification Enforcement
6 Bureau Exhibit 33, which is the testimony of Dennis Bookey.
7 The reason that I am giving Your Honor and Mr. Southmayd a
8 copy is that there was one correction made.

9 MS. LANCASTER: It hasn't been made yet

10 MR. SHOOK: Oh, it hasn't been made yet?

11 MS. LANCASTER: No.

12 MR. SHOOK: Your Honor, I misspoke. Your Honor,
13 let me start over again.

14 JUDGE SIPPEL: Certainly.

15 MR. SHOOK: What I'm going to do is, I'm going to
16 give the Court Reporter a document marked for identification
17 as Enforcement Bureau Exhibit 33 and present a copy of this
18 to Mr. Bookey. The copies have been previously exchanged to
19 yourself and Peninsula.

20 (The document referred to was
21 marked for identification as
22 Enforcement Bureau's Exhibit
23 33.)

24 JUDGE SIPPEL: Okay. Thank you, Mr. Shook.

25 DIRECT EXAMINATION

1 BY MR. SHOOK:

2 Q What is the document that I have placed in front
3 of you?

4 A It's my testimony.

5 Q Is there anything that you need to do to correct
6 that testimony?

7 A There was just one word in our communication over
8 the phone that did not get changed.

9 Q Which word is that?

10 A It is on Page 3. In the third line, the word
11 reduce, evaluate.

12 JUDGE SIPPEL: All right. Are you substituting
13 evaluate for reduce?

14 THE WITNESS: Correct.

15 JUDGE SIPPEL: So we strike the word reduce --

16 THE WITNESS: Correct.

17 JUDGE SIPPEL: -- and insert evaluate?

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: Okay. Now will somebody be sure
20 that that gets done on the copy that the Court Reporter has.

21 BY MR. SHOOK:

22 Q Mr. Bookey, other than that correction, is your
23 testimony accurate to the best of your knowledge?

24 A Yes, sir. It *is*.

25 MR. SHOOK: Your Honor, I would offer Enforcement

1 Bureau Exhibit 33 into evidence.

2 JUDGE SIPPEL: Any voir dire?

3 MR. SOUTHMAYD: Yes, Your Honor, very briefly, he
4 said.

5 VOIR DIRE EXAMINATION

6 BY MR. SOUTHMAYD:

7 Q Good afternoon, Mr. Bookey. I'm Jeff Southmayd,
8 counsel for Peninsula Communications. Let me ask you, in
9 Paragraph 2, one, two three, the fifth line, should that F
10 indeed be a K, reflecting KWVV-FM?

11 A Yes. It should.

12 JUDGE SIPPEL: Okay. Do you see where that is,
13 Mr. Shook?

14 MR. SHOOK: Yes, I do.

15 JUDGE SIPPEL: I am making that change on my copy

16 BY MR. SOUTHMAYD:

17 Q Mr. Bookey, what's your current employment?

18 A My current employment is with Morris
19 Communications in Anchorage.

20 Q Are you connected with broadcast stations that
21 Morris Communications owns?

22 A Yes. I am.

23 Q What are those stations?

24 A They are: KFQD, KWHL, KMXS, KHAR, KBRJ, and KEAG.

25 Q Can you go back for me and tell me which are AMs

1 and which are FMs and which are TV?

2 A None of them are television.

3 Q Okay.

4 A KFQD is AM, KHAR is AM. The rest are FMs.

5 Q Does Morris Communications own any newspapers?

6 A Yes. It does.

7 Q What newspapers?

8 A I couldn't even give you them all, sir. They're
9 all across the United States.

10 Q Do they own newspapers in Kodiak?

11 A They do not.

12 Q Kenai, Soldotna?

13 A Yes, sir.

14 Q What's their newspaper there?

15 A The Peninsula Clarion.

16 Q What's your position with Morris Communications?

17 A I'm general manager of those six radio stations I
18 listed.

19 Q All licensed to Anchorage?

20 A That's correct.

21 Q Is there a reason you didn't mention this in your
22 testimony?

23 A My testimony is relevant to Kodiak, so that's why
24 I did not mention it. I am a principal in Kodiak and that's
25 what my conversation is about.

1 Q Did you prepare this testimony yourself?

2 A I was interviewed by the FCC attorneys and this
3 testimony was put together as a result of that interview.

4 Q But you didn't create it and draft it?

5 A That is correct.

6 Q You reviewed something that had been previously
7 written for you. Is that correct?

8 A That's correct, after an interview.

9 Q On Page 2, Paragraph 4, one, two, three, the
10 fourth line: Kodiak Broadcasting promptly lost \$21,000.00 in
11 annual revenues because of lost advertising from just two of
12 its accounts.

13 What were those accounts?

14 A Max Sporting Goods and Seward. It's right in this
15 testimony, Seward's Ship Dry Dock.

16 Q Can you account for which advertisers you lost
17 approximately \$30,000.00 in local advertising revenue to
18 date?

19 A Primarily those two.

20 Q So the \$30,000.00 includes the \$21,000.00?

21 A That's correct. Because the \$21,000.00 was over
22 just the first 12 months.

23 Q NOW are these revenues that *you* had under contract
24 and were withdrawn by these advertisers?

25 A These advertisers were **on** consistent schedules

1 that produced significantly more revenue prior to the
2 translators coming back on the air.

3 Q But what you're saying is, these were anticipated
4 revenues?

5 A These were very, very consistent.

6 Q But anticipated? You had not scheduled the
7 advertising to run on your station and you had no contract
8 for it?

9 A Those took place month to month.

10 MR. SOUTHMAYD: I see. Your Honor, I'm going to
11 ask that you strike that sentence because the witness has
12 indicated it's his speculation. He had no real expectation,
13 other than the fact of some past history that he would
14 actually get that advertising.

15 JUDGE SIPPEL: Well, why couldn't we *just* insert
16 an estimated? How would that do, Mr. Shook? He lost an
17 estimated?

18 MR. SOUTHMAYD: How about a hoped for?

19 JUDGE SIPPEL: Well --

20 MR. SHOOK: Your Honor, I would say this is well
21 beyond hoped for.

22 JUDGE SIPPEL: I would say, too. But on the other
23 hand, *it is* not cash in hand. *It is* not the kind of money I
24 earn.

25 MR. SOUTHMAYD: I'm perfectly happy with

1 estimated.

2 JUDGE SIPPEL: Okay. Promptly lost an estimated -
3 - and that it has lost an estimated, approximately.

4 MR. SHOOK: Your Honor, I believe it wouldn't be
5 necessary in the second clause, simply because the verb used
6 is estimated.

7 JUDGE SIPPEL: Yes, excuse me. Okay. Then our
8 only change would then be Paragraph 4 on Page 2, one, two,
9 three, four, in the fifth line, before the figure \$21,000.00
10 is inserted: an estimated. Go ahead, Mr. Southmayd.

11 MR. SOUTHMAYD: Thank you, Your Honor. Your
12 Honor, we're going to object consistent with the past
13 objections we've made to Paragraph 6: Because of its
14 unauthorized translators. I think previously we described
15 them as allegedly unauthorized?

16 MR. SHOOK: I have no problems with that

17 JUDGE SIPPEL: We will insert the word allegedly
18 before unauthorized in the beginning of Paragraph 6.

19 MR. SOUTHMAYD: Those are all I have for
20 objections, Your Honor.

21 JUDGE SIPPEL: Okay. Then, subject to the rulings
22 made, the Bureau's Exhibit 33, the testimony of Mr. Dennis
23 Bookey, is received in evidence as the Bureau's **Exhibit 33**.
24 Are you tendering the witness now for cross-examination?

25 (The document referred to,

1 previously marked for
2 identification as Enforcement
3 Bureau's Exhibit 33, was
4 received in evidence.)

5 MR. SHOOK: I am.

6 JUDGE SIPPEL: Mr. Southmayd?

7 MR. SOUTHMAYD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. SOUTHMAYD:

10 Q Mr. Bookey, based on your testimony, KVOK-FM and
11 KRXX-FM are located and operate in Kodiak, Alaska. Is that
12 correct?

13 A That's correct.

14 Q Are they commercial broadcast stations?

15 A Yes.

16 Q What other commercial broadcast stations presently
17 operate and compete for radio revenues in Kodiak?

18 A Up until a few weeks ago --

19 Q Presently?

20 A None.

21 Q So would it be fair to say you have a commercial
22 radio monopoly on Kodiak Island?

23 A I wouldn't use those words.

24 Q But would it be fair to say?

25 A It would be fair to say that we have the only

1 commercial radio stations on the air, yes.

2 Q Since you purchased the station and up until the
3 end of August, that your only commercial radio competition
4 were the Peninsula translators?

5 A On radio, yes. That's not our only commercial
6 competition, obviously.

7 Q Commercial radio competition?

8 A That's correct.

9 Q And **now** they're gone. **Is** that correct?

10 A As of the most recent report I had, they were off
11 the air.

12 Q As an owner, and I ask this because apparently
13 you're involved elsewhere on a day-to-day basis, are you
14 familiar with the commercial-advertising practices of your
15 stations in Kodiak?

16 A Relatively.

17 Q Have you upped your rates since the Peninsula
18 translators went off the air?

19 A No. We have not.

20 Q **Do** you anticipate upping your rates now that
21 there's no competition in the market?

22 A Probably not as a result of that.

23 Q Pardon me? **I didn't** catch the end of that.

24 A Probably not as a result of that.

25 Q Does it make it easier **to** raise your advertising

1 rates with no competition in the market?

2 A It could.

3 Q How did you come to become a witness in this
4 hearing proceeding, Mr. Bookey?

5 A I'm an affected party, I believe, by being a
6 principal in the Kodiak radio stations.

7 Q Pardon me. I'm sorry, I didn't mean to cut you
8 off. I apologize. By affected party, do you mean Mr.
9 Becker's translators competed with you and that's why you're
10 here?

11 A Mr. Becker's translators, in my opinion, didn't
12 operate legally. We purchased a radio station in a market
13 that did not have direct competition and you wouldn't expect
14 that you'd be getting a signal to compete with 200 miles
15 away. so, yeah, that's why I'm here.

16 Q So are you here to protect your competitive
17 position in the market and make sure Mr. Becker doesn't
18 return to the air?

19 A No. I am here because everybody should have to
20 play by the same set of rules.

21 Q Do you mean by that, a level playing field?

22 A That would be one way to put it.

23 Q Okay. Mr. Bookey, do the Morris Communications
24 stations serve the market of Kenai, Alaska?

25 A Some of the stations' signals would get down there.

1 Q How about Kodiak?

2 A No.

3 Q None of the Morris stations have any advertising
4 from Kodiak businesses?

5 A No. I suppose we could get somebody very
6 specifically that might come, but I don't recall anybody
7 from Kodiak.

8 Q Mr. Bookey, were you a witness in a criminal
9 proceeding in San Francisco concerning a fraudulent
10 transaction involving a Bill Morris?

11 A Yes. I was.

12 Q Did it involve a broadcast transaction in which
13 you were involved?

14 A Yes.

15 Q Can you tell me --

16 A My company was involved

17 Q Well, Mr. Morris, weren't you personally
18 involved --

19 MR. SHOOK: Objection.

20 JUDGE SIPPEL: What is the basis of the objection?

21 MR. SHOOK: Well, first of all, he addressed Mr.
22 Bookey as Mr. Morris.

23 MR. SOUTHMAYD: *I'm sorry, my mistake. I*
24 *apologize.*

25 JUDGE SIPPEL: Sustain that objection.

1 BY MR. SOUTHMAYD:

2 Q Mr. Bookey, didn't you write the checks involved
3 in that transaction?

4 A The check was written in our office, yes.

5 Q *And* didn't you convey it?

6 A I probably did, yes.

7 Q Probably, or you did convey it?

8 A Yes. I did convey the check.

9 Q I see. Were you subject to any criminal sanctions
10 for your role in that proceeding?

11 A No. I was a Government witness.

12 Q Were you employed by Pioneer Broadcasting?

13 A Yes.

14 Q When did you cease to be employed by Pioneer
15 Broadcasting?

16 A When the assets of Pioneer were purchased by
17 Morris Communications.

18 Q I see, and when was that?

19 A 1998, to the best of my knowledge.

20 Q Mr. Bookey, are you a member of the Alaska
21 Broadcaster's Association?

22 A No.

23 Q *Is* Morris Communications a member?

24 A Yes.

25 Q Do you attend Alaska Broadcaster's Association

1 meetings on behalf of Morris?

2 A Occasionally.

3 Q Are you now a board member of the Alaska
4 Broadcaster's Association?

5 A No.

6 Q Have you been in the past?

7 A Yes.

8 Q In the past, when you were a board member of the
9 Alaska Broadcaster's Association, did they come out with an
10 association position in opposition to Mr. Becker's continued
11 operation of his translators?

12 A No.

13 Q Have they come out with such a position?

14 A I have heard that they have, but not while I was
15 on the board.

16 Q Were you involved in it, in the decision to come
17 out with that position?

18 A At what time are you speaking?

19 Q At the time or before the time, did you directly
20 suggest or were you involved in the process by which the
21 Alaska Broadcaster's Association came out with its position
22 in opposition to Mr. Becker's operation of his translators?

23 A I believe I wrote a letter to the president
24 exposing the situation.

25 Q Why did you do that?

1 A Because, as I stated before, I think everybody
2 should play by the same set of rules.

3 Q So are you saying you weren't trying to get rid of
4 a competitor in Kodiak?

5 A Not specifically.

6 Q Mr. Bookey, have you attended Alaska Broadcaster's
7 Association meetings with Federal Communications Commission
8 staff here in Washington, D.C.?

9 A I have attended one such meeting.

10 Q During the course of that meeting, did you discuss
11 with members of the Federal Communications Commission staff
12 the Alaska translator question; and, specifically, Mr.
13 Becker's operation of his translators?

14 A No, sir. I did not.

15 Q Were there discussions of that in your presence
16 that you're aware of during that meeting with the Federal
17 Communications Commission?

18 A I haven't been to the Federal Communications
19 Commission Office in many, many years.

20 Q Yes. But this proceeding has been going on since
21 1995, Mr. Bookey. Have you been there since 1995?

22 A I could have been there since 1995, but I had no
23 such discussions. We had not private meetings with anyone
24 at the Federal Communications Commission.

25 Q How about public meetings where this matter was

1 discussed, meetings you attended?

2 A There were no discussions on this in meetings. We
3 did a presentation to the Federal Communications Commission,
4 including Commissioners. It was all public. It was word-
5 for-word recorded. It was videotaped.

6 Q Presentation on what, Mr. Bookey?

7 A Broadcasting in Alaska.

8 Q Did that presentation contain a section about the
9 operation of translators by Mr. Becker?

10 A No. It did not.

11 Q Mr. Bookey, have you written letters to the
12 Federal Communications Commission, asking it to terminate
13 Mr. Becker's operation?

14 A No, sir.

15 Q Has your company, Kodiak Broadcasting Company,
16 Inc., participated in the filing of any petitions to deny
17 against any applications that Peninsula Communications has
18 filed with the Federal Communications Commission?

19 A No.

20 Q Are you a participant in the appeal pending before
21 the United States Court of Appeals for the District of
22 Columbia Circuit involving Peninsula Communications, Inc.
23 and *its* translators in Alaska?

24 A Yes.

25 Q Are you an intervenor in that case?